Supreme Court of the United States.

DECEMBER TERM, 1867.

No. 122.

THE UNITED STATES, *Appellants*,

vs.

SIMEON HART.

Appeal from the Supreme Court of the Territory of New Mexico.

ROBERT LEECH,

Counsel for Appellee.

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BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

On the 22d day of September, 1865, a Libel of Information in the name of the United States of America, purporting to be under the act of Congress entitled "*An Act to suppress Insurrection, to punish Treason and Rebellion, to seize and confiscate the Property of Rebels, and for other Purposes*," approved July 17, 1862 (12 Statutes at Large, 589,) was filed by the United States District Attorney, in the District Court of the United States for the Third Judicial District of the Territory of New Mexico, against certain real estate consisting of lands, flouring mills, dwelling houses, corrals, stables, &c., situated in the county of El Paso, State of Texas, the property of Simeon Hart, of said county and State; seized by the United States Marshal of said Territory, as Captor.—(Printed record, pp. 1, 2, 3, 7.)

On the day and year aforesaid, a monition was issued by the Clerk of said Court, which was, on the 9th of November, 1865, returned into Court by the United States Marshal.—(Record, pp. 3, 4, 5.)

On the 20th of November, 1865, a publication was filed in said Court, wherein it appeard that the said Marshal had made proclamation, giving notice to all persons claiming said property, or knowing or having any thing to say why the same should not be decreed to be forfeited to the United States, to appear before said Court, "and interpose their claims, and answer said libel, and make their allegations in that behalf."—(Record, pp. 7, 8.)

The Counsel for the said Simeon Hart, the owner of, and claimant to, the said property, moved to quash the monition, return, and publication, which motion was overruled by the Court. To this ruling of the Court, the claimant's Counsel excepted; and a bill of exceptions was signed by the Court.—(Record, pp. 5, 6.)

On the 29th of November, 1865, the claimant, by his Counsel, in open Court, asked leave of the said Court, to file his claim to the property libelled. The District Attorney objected, and the objection was sustained by the Court. Whereupon, the said claimant, by his Counsel, excepted to the opinion of the Court, and asked the Court to sign a bill of exceptions, which was *refused* by the Court. The Counsel, then, offered to file the said claimant's plea to the jurisdiction of the Court, to which the District Attorney objected, and the Court sustained the objection. To the opinion of the Court, in refusing said plea to be filed, the said claimant's Counsel, excepted, and asked the Court to sign a bill of exceptions, which the Court *refused* to do. Thereupon, S. B. Elkins, Esq., appeared and stated to the Court, that he appeared for Hart, the claimant in the case, and was ready to show cause why the property libelled should not be condemned

as forfeited; but the Court *refused any appearance in the cause to be made.*—(Record, pp. 8, 9.)

The Court, thereupon, ordered, adjudged, and decreed, that a decree by *default*, be entered against the property libelled, and that testimony be taken before a Commissioner, and reported at said term of said Court.—(Record, p. 9.)

Testimony in the case, was accordingly taken *ex-parte* before a Commissioner, and reported to the Court.—(Record, pp. 10, 11, 12.)

On the 29th of November, 1865, the Attorney of the United States asked, and obtained, leave of the Court to amend the libel in said case.—(Record, p. 9.)

And on the 2d day of December, 1865, the presiding Judge of said Court rendered a decree in said cause, whereby the said real estate was condemned as forfeited to the United States, and the same was ordered to be sold and conveyed by the United States Marshal for the District of New Mexico—one-half of the proceeds of such sale, after the deduction and payment of all fees and costs accruing in said case, *to go to the said Marshal*, Abraham Cutler, as *informant*.—(Record, pp. 12, 13.)

On the 2d day of December, 1865, the Attorneys for the said claimant, asked the said Court, for an appeal to the Supreme Court of the said Territory, in said cause. To their appearance for this purpose, the District Attorney objected, which objection was sustained by the Court. (Record, p. 13.)

Afterwards, at the January Term, 1866, of the Supreme Court of the Territory of New Mexico, the said claimant appeared by his Attorneys, and asked leave of said Court to file his assignment of errors, which was granted by the Court; and the assignment of errors was accordingly filed.—(Record, pp. 26, 27.)

Whereupon, the District Attorney filed his joinder in error.—(Record, p. 30.)

And, on the 6th day of January, 1866, it was ordered, adjudged, and decreed by the said Supreme Court, "that the judgment and decree in the Court below, be, and hereby is, reversed and annulled, and this cause be remanded to the District Court for the County of Dona Ana, to be by the said Court dismissed for the want of jurisdiction in said Court, over the real estate in the county of El Paso, Texas, libelled in this cause, at the costs of the United States in the District Court, and in this Court."—(Record, p. 33.(

From this decision, the United States District Attorney took an appeal to the Supreme Court of the United States.—(Record, p. 34.)

Points and Authorities.

The following points and authorities will be relied on, for the Appellee:

First: The District Court of the United States for the Third Judicial District of the Territory of New Mexico, had no jurisdiction whatever over the real estate in the county of El Paso, Texas, libelled in this cause. The only legislation which confers on said Court, any jurisdiction in the county of El Paso, Texas, is contained in an act of Congress, approved March 3, 1863, entitled "*An Act to facilitate the Collection of the Revenue in El Paso County, Texas, and in the Territory of New Mexico*," (12 Statutes at Large, 761,) which act is in these words:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the tenth section of an act entitled 'An act making appropriations for the legislative, executive and judicial expenses of the Government for the year ending thirtieth of June, eighteen hundred and fifty-eight,' approved March third, eighteen hundred and fifty-seven, be, and the same is hereby, repealed; and the act entitled 'An act creating a collection district in Texas and New Mexico,' approved August second, eighteen hundred and

fifty-four, is hereby revived and re-enacted; *Provided*, That the collector shall reside at El Paso, Texas, instead of Frontera.

"SEC. 2. *And be it further enacted*, That the jurisdiction of the district court of New Mexico shall extend over the citizens of El Paso county, Texas, only in cases not instituted by indictment, and the trial and proceedings for violations of the revenue laws in said district court of New Mexico, shall be the same as in other district courts of the United States invested with admiralty powers; and this act shall take effect from and after its passage."

The 3d section of the act of Congress approved August 2, 1854, (10 Statutes at Large, 335,) which act is revived and re-enacted by the 1st section of the act above quoted, provides as follows:

"SEC. 3. *And be it further enacted*, That the District Court for the Territory of New Mexico shall have and exercise jurisdiction over all cases which shall arise in the Collection District of Paso del Norte, in the administration of the revenue laws, in the same manner, as if the said district was entirely within the Territory of New Mexico."

The foregoing legislation, while it extends the jurisdiction of the District Court of New Mexico, over the *Citizens* of El Paso county, Texas, in certain *Revenue* cases, manifestly confers no jurisdiction whatever on said Court, in proceedings against *Real Estate*, under the *Confiscation* act of July 17, 1862.

Second: The rulings of the said District Court, in *refusing* to allow the said claimant to file his claim to the property libelled—*refusing* to allow him to file a plea to the jurisdiction of the Court—*refusing* to permit him to *appear* and show cause why the property libelled should not be condemned as forfeited, and in *refusing* to sign bills of exceptions to the said rulings, (Record, pp. 8, 9,) were in palpable violation of the rights of the claimant, and are grossly repugnant to the fundamental principles

of our jurisprudence, as well as to the settled practice of the Courts.

This proposition seems so obvious, that no argument or citation of authorities in support thereof, is deemed necessary in this Court.

Third: The said District Court, as a Court of *Admiralty*, had no jurisdiction of the subject. The doctrine is well-settled, that in the trial of all cases of seizure on *Land*, the Court sits as a Court of *Common Law*, and that in all cases at common law, the trial must be by *Jury*. This case was one of seizure on land, and the District Court, therefore, erred in trying the cause upon testimony taken *ex-parte* before a Commissioner, and without the intervention of a jury.

The 7th section of the confiscation act of July 17, 1862, provides that the proceedings in Court to secure the condemnation and sale of any property seized under said act, shall be *in rem*, and "shall conform *as nearly as may be*, to proceedings in *admiralty or revenue cases.*"

The "proceedings in admiralty or revenue cases," to which reference is made in the act, are obviously the "proceedings" in the course of practice adopted by the District Courts of the United States, in cases of seizure where the proceedings are *in rem.*

By the Judiciary act, these Courts are invested with exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation and trade of the United States, where the seizures are made on waters which are navigable from the sea, by vessels of ten or more tons burden, within their respective districts, as well as upon the high seas; and, also, of all seizures on land or other waters than as aforesaid, made under the laws of the United States. According to the judicial constructions which, at an early period, were given to this enactment,

seizures of the *first* above mentioned description, are of *Admiralty* jurisdiction, and those of the *second* description, of *Common Law* jurisdiction. Suits *in rem*, in these cases, are, therefore, instituted on the admiralty side, or the common law side, of the Court, according to the *locality* of the seizure.—(Conkling's Treatise, title Practice in Cases of Seizure, 453, 456.)

When the seizure has been made on *Land*, or on waters not so navigable, it is of *Common Law*, or as is frequently said, of Exchequer jurisdiction, and the suit is instituted by what is technically called an *Information*.—(Conk. Tr., 512. And see note.) And in such cases, the plea on the part of the claimant, or defence, on a traverse of the facts alleged in the information, concludes to the *Country*, and the issue is completed by adding the *Similiter*.—(Conk. Tr., 546.)

When the proceeding is on the exchequer or *Common Law* side of the Court, the trial is conducted in the same manner, and is subject to the same incidents, as an *ordinary personal action*.—(Conk. Tr., 557.) And *all issues of fact* are tried by *Jury*.—(8 Wheaton, 391.)

In the case of The Sarah, (8 Wheaton, 391,) Chief Justice Marshall delivering the opinion of this Court, says:

"By the act constituting the judicial system of the United States, the district courts are courts both of common law and admiralty jurisdiction. In the trial of all cases of seizure on land, the court sits as a court of common law. In cases of seizure made on waters navigable by vessels of ten tons burden and upwards, the court sits as a court of admiralty. In all cases at common law, the trial must be by jury. In cases of admiralty and maritime jurisdiction, it has been settled, in the cases of The Vengeance, reported in 3 Dallas's Rep. 297; The Sally, in 2 Cranch's Rep. 406; and The Betsy and Charlotte, in 4 Cranch's Rep. 443; that the trial is to be by the court.

"Although the two jurisdictions are vested in the same tribunal, they are as distinct from each other as if they

were vested in different tribunals, and can no more be blended than a court of chancery with a court of common law."

In the case of Clark *vs.* The United States, (2 Washington's Circuit Court Reports, 519,) it was held that the 9th section of the Judiciary act of 1789, assigns to the *Common Law* side of the District Courts, all cases of seizures on *Land*, arising under the laws of impost, navigation and trade.

The 7th article of the amendments to the Constitution of the United States, declares that "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."

This Court, in the case of Parsons *vs.* Bedford, (3 Peters, 433,) decided that "in a just sense this amendment to the Constitution may well be construed to embrace all suits which are not of equity and admiralty jurisdiction, whatever may be the *peculiar form* which they may assume to settle legal rights."

Fourth: The Court decreed that *one-half* of the proceeds arising from the sale of said real estate, *after deducting and paying all fees and costs*, should be paid to the United States Marshal, as "*informant;*" whereas the act of July 17, 1862, under which the said proceedings were had, does not authorize the payment of any portion of the proceeds of such sale to an *informant*, but, on the contrary, expressly provides in the 7th section, that such proceeds "shall be paid into the Treasury of the United States," for the purposes specified in said act.

Fifth: Before the amendment of the libel, the taking of the testimony, the hearing of the cause, and the rendition of the decree of condemnation in this case, to-wit, on the *third day of November*, 1865, the said Simeon Hart obtained from the President of the United States, a full *Pardon* "for all offences by him committed arising from

participation, direct or implied, in the rebellion," which pardon he has pleaded in this Court.

The act of July 17, 1862, in the 6th section, expressly subjects property to confiscation, *on account* of the personal criminality of the owners, and clearly *for the purpose* of punishing such criminality.

Under these circumstances, the principles enunciated by this Court, in Ex Parte Garland, (4 Wallace, 333,) it is submitted, are decisive of this case in favor of the Appellee. In that case, the Court says:

"A pardon reaches both the punishment prescribed for the offence and the guilt of the offender, and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that, in the eye of the law, the offender is as innocent as if he had never committed the offence. If granted before conviction, it prevents any of the penalties and disabilities, consequent upon conviction from attaching. If granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights. It makes him, as it were, a new man, and gives him a new credit and capacity."

The guilt of the owner of the property being thus wholly removed by the full pardon granted him by the Executive, all the legal consequences of that guilt, necessarily fall therewith.

No notice has been taken of many of the manifest errors appearing in the record of the proceedings in this cause, but it is submitted that sufficient has been presented to show conclusively to this Court, that the decision of the Supreme Court of the Territory of New Mexico, in reversing the judgment and decree of the said District Court in this case, is clearly right, and should be affirmed.

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